

Perkins Coie Appellate Team Wins Unanimous Supreme Court Ruling in Sixth Amendment Pro Bono Case

WASHINGTON, D.C. (June 24, 2024)—Perkins Coie is pleased to announce that a pro bono appellate team has secured a unanimous 9-0 ruling from the U.S. Supreme Court in the case of *Smith v. Arizona*. The Court ruled Friday that a pro bono client’s Sixth Amendment right of confrontation was implicated when Arizona prosecutors introduced statements by an absent forensic analyst through a substitute expert.

The unanimous Supreme Court ruling stems from the pro bono client, Jason Smith, being charged with drug-related offenses in Arizona state court. To prove its charges, the State had the alleged drug evidence tested by a crime lab analyst. However, by the time of trial, the analyst was no longer employed by the state-run crime lab, and the State instead called a “substitute” expert.

The Perkins Coie pro bono appellate team led by partner [Hari Santhanam](#) also included partner [Michael Huston](#), senior counsel [Diane Johnsen](#), and associates [Victoria Romine](#) and [Jonathan Tietz](#). Robert Trebilcock of the Yuma County Public Defender’s Office also represented Smith.

Writing for the Court, Justice Elena Kagan explained that “[w]hen an expert conveys an absent analyst’s statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth,” thereby implicating the defendant’s confrontation right. Seven Justices agreed with that principle, and all nine Justices agreed that the absent analyst’s statements that the State introduced at Smith’s trial were offered for their truth.

During Smith’s state trial, the State called a substitute expert, who reviewed only the absent analyst’s report and notes but did not conduct or observe any of the tests at issue or perform any quality assurance of those tests. Although the substitute expert indicated that it would have taken him less than three hours to retest the evidence, the State did not have him do so before trial. Instead, over Smith’s objections, the trial court permitted the substitute expert to recount statements from the absent analyst’s notes and report regarding the tests she performed on the evidence and the results she reached. The trial court entered a judgment of conviction, which the Arizona court of appeals affirmed. The court of appeals held that the substitute expert’s testimony did not violate Smith’s Sixth Amendment right to be confronted with the witnesses against him. The Arizona Supreme Court also denied discretionary review.

The Perkins Coie legal team then filed a petition for a writ of certiorari with the U.S. Supreme Court on behalf of Smith, challenging the Arizona court of appeals’ decision, that the Court granted in September of 2023. Perkins Coie partner Hari Santhanam argued the case in January 2024. Per the unanimous ruling, the case has been remanded to the court of appeals for further proceedings.

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